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## They're Playing Hardball! EPA Audits for Lead-based Paint Disclosure Violations

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*(Editor's note: Sylvia teaches prelicense, post license, and continuing education courses through her school, Sylvia Shelnutt Training and Seminars. Sylvia also teaches through the Georgia Institute of Real Estate, the Atlanta Institute of Real Estate, Clayton State College and University and the Atlanta Board of Realtors, among others. The following was reprinted with permission from the March, 1999 issue of the REEAction, the newsletter of The Real Estate Educators Association.)*

The Environmental Protection Agency, EPA is playing hard ball with lead-based paint violators. In an article in The Oklahoman newspaper on July 30, 1998, they cited two instances of fines for non-disclosure of lead-based paint.

A broker in Ponca City, Oklahoma, faces a fine of \$11,000.00. The EPA alleged that a realty agent in the company failed to give a tenant information about the danger of lead-based paint. In the second instance, a fine for \$408,375.00 was assessed against the Kingsville Naval Air Station in Texas. Here, the EPA alleged that the military housing office did not give lead-based paint disclosure information to 11 military housing units, before finalizing leasing agreements.

Title 10, Section 1018, states disclosure of lead-based paint must be made to both purchasers and renters of properties built before January 1, 1978. The compliance dates were September 6, 1996, for owners of more than four residential dwellings, and December 6, 1996, for owners of one to four dwellings.

*The question is, are you touching all bases in this lead-based paint disclosure ball game?*

Do you personally own or manage rental property built before 1978? Do you manage agents who sell, manage or own property that will fall into this time category? If the answer is YES, have you made and documented proper disclosure: If you haven't, now is the time to go back and touch all bases. Get two copies of the rental lead-based paint disclosure form to the tenant immediately, along with the approved brochure. Have them sign and return a copy of the disclosure form for your files. This is your proof of compliance in case of an audit.

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*Have you sold properties built before January 1, 1978?*

Check your files from the compliance dates forward, to ensure that the proper forms have been attached, and all sections properly filled out.

The EPA stresses the importance of omitting any blocks, initials or signatures. Audits will usually be initiated through a tip or complaint.

Inspectors will also conduct random audits while in the area, often targeting locations that have a majority of homes built prior to 1950. An audit inspector will usually ask for twelve random files for properties sold or rented that were built prior to January 1, 1978. The inspector's job is to review files and submit a written assessment of their findings. The inspector has no authority to make judgement regarding non-compliance.

The decision regarding non-compliance and any subsequent fine is made by EPA officials and is based on the information contained in the written report submitted by the inspector. Notification of any non-compliance, and the fine assessment should follow within three weeks. If no violation is found there will be no further contact by EPA.

"Play Ball" with the EPA by being a lead-based paint advocate.

One way you can help your community and yourself is by using the lead-based paint disclosure requirement as a contact tool to meet FSBO's. A FSBO attempting to sell a home built prior to 1978 probably doesn't know about lead-based paint disclosure rules, or how to get the necessary forms. The Title X disclosure requirement applies to all homes built before 1978. Make the pamphlet and disclosure information available to them. Doing so will place you in a position to establish a relationship that could give you a "catcher's mitt" for the listing. What a great way to create a reason for a helpful contact! Even if you don't get a listing, your reward is protecting an unsuspecting family with small children from the possible danger of lead-based paint.

EPA isn't out there trying to find problems. They are simply enforcing Title X compliance. If audited, cooperate and make necessary changes.

Cover your bases... get your files in order... make sure proper disclosure is made... and all forms are signed.

Don't get fined and thrown out of the ball game for missing a base.

## *MREC Web Site*

See [www.ecodev.state.mo.us/pr/](http://www.ecodev.state.mo.us/pr/) for current statutes and regulations.

The Missouri Real Estate Commission would like to invite everyone to come and visit our new "Web Site". When you access [www.ecodev.state.mo.us/pr/](http://www.ecodev.state.mo.us/pr/) you are taken to the Division of Professional Registration's web page. The Missouri Real Estate Commission is an agency under the Division. From the Division's web page, you can make several choices. Those of interest to you would probably be the 1st and 2nd buttons. The first button allows you to choose the web page of the profession you want to access. When "Real Estate Agents, Brokers" is selected you are then taken to the Commission's web page. Here is where our forms are located by clicking on "Application Forms". In order to access one of the forms, you must first download the Adobe from the Professional Registration's web page by clicking on the yellow "Get Acrobat Reader" button and follow the download directions.

The 2nd button takes you to a listing of all the downloadable license directories of the Division.

If you have ideas or suggestions, contact us at (573) 751-2628.

## *1999 Holiday Schedule*

The Missouri Real Estate Commission will be closed on these State of Missouri holidays:

<b>Holidays</b>	<b>Date in 1999</b>
Veterans' Da .....	November 11
Thanksgiving .....	November 25
Christmas Day .....	December 24

## *Attention Property Managers*

Do your management accounts comply with MREC rules and regulations?

Section 339.105.2, RSMo requires that all escrow or trust accounts be registered with the Missouri Real Estate Commission. Often this requirement is overlooked by property managers because the accounts are viewed as "owners accounts" or "property accounts", and not as escrow accounts, by the broker. However, the provisions of Chapter 339.105 pertain to all accounts that hold money belonging to others, including funds in which the broker or brokerage

may have some future interest. In other words, if any licensee affiliated with the brokerage has signing authority on a real estate or property management account that holds monies belonging to another (including owners/landlords, tenants, buyers, or sellers), the account must be registered with the Missouri Real Estate Commission. In addition, the escrow account(s) is subject to the provisions of Chapter 339 RSMo and must be maintained in accordance with all MREC rules and regulations. To register an escrow or trust account, complete a Consent to Examine and Audit Escrow or Trust Account form. Forms may be obtained from the MREC website at [www.ecodev.state.mo.us/pr/](http://www.ecodev.state.mo.us/pr/) or by calling the Commission office at (573)751-2628.

Were you aware that a licensee representing a landlord/owner must make disclosure of his or her agency relationship to the tenant?

Effective September 1, 1998, an agent procuring a tenant must make oral and written disclosure of the licensee's agency status. The licensee must make oral disclosure to the unrepresented party no later than the first showing of the property, or, in the case of dual agency, immediately upon becoming a dual agent. Written disclosure must be made no later than the signing of an offer to purchase or lease. Likewise, an agent representing a tenant has the same disclosure requirements to the landlord.

Do your management agreements meet the requirements of 4 CSR 250-8.220?

Every written agreement between an owner and broker must include the following:

- \* The beginning date of the agreement;
- \* The complete street address or legal description of the property(ies) to be managed;
- \* The amount of the fee or commission to be paid;
- \* When the fee or commission will be paid;
- \* Who will be holding security deposits (owner or broker);
- \* Who will be holding pre-paid rents (owner or broker);
- \* Terms and conditions for termination of the agreement by the owner or the broker; and
- \* The signatures of the owner and the broker or their authorized agent.

In addition to the above, section 339.720 and 339.780 require additional terms, which must be included in a management agreement dated on or after September 1, 1997:

- \* The management agreement with the owner/landlord must include a licensee's duties and responsibilities, as outlined in 339.730 RSMo. If the written agreement with the owner/landlord creates a transaction broker relationship, rather than landlord agency, the agreement must contain the duties and responsibilities of a transaction broker, as outlined in 339.755 RSMo (both statutes can be viewed on the MREC website).
- \* The written agreement must state whether the landlord/owner authorizes subagency.

## *New Handbooks*

New handbooks will be issued to all licensees upon passage of the enclosed proposed regulations. The new booklets will contain all current statutes and regulations. In the meantime, please visit our website for all current statutes and regulations.

## *Forms Usage*

A point to ponder on usage of standard forms:

The Missouri Real Estate Commission has been hearing that some companies are insisting that offers coming in from other companies be rewritten using the listing companies' form before the offer is submitted to the sellers. This practice calls up a multitude of concerns. Some of those concerns are as follows:

- 1) Is 4 CSR 250-8.100 (2) being violated because the original offer is not being submitted as written?
- 2) Does the acceptance of the re-written offer constitute a contract or a counter-offer?
- 3) If this is a counter-offer, is this explained fully to the seller?
- 4) Are liabilities created if the two contracts differ or information has been omitted?

While reviewing this issue, there appears to be more questions than answers. Therefore, the Commission would suggest this practice not continue and that all offers be promptly tendered to the seller as written. Any concerns you have with the original contract as written should be discussed with the seller and addressed in a counteroffer to ensure the seller makes a fully informed decision.

## *Administrative Fee*

During the course of MREC audits, the examiners are seeing charges on closing statements under various titles. These are typically made payable to the brokerage to defer administrative/clerical costs. These fees are permitted provided the broker has obtained written authorization from the party being charged. These are commonly addressed in the brokerage service agreement.

Also, please remember that a broker is strictly prohibited by 4 CSR 250-8.140 (2) for making a separate charge for completing any standardized forms. Keep this in mind if you are considering any type of fee in addition to the commission.

## *Presenting Additional Offers*

The MREC office has received several inquiries as to whether or not an offer has to be presented to the seller if the seller has already accepted an offer for the property. Regulation 4 CSR 250-8.100 (2) requires that all written offers, including back-up offers, be promptly tendered to the seller.

Thus, if an offer is received subsequent to the seller accepting another offer, the new offer must be identified as a back-up and promptly submitted to the seller. This regulation must be followed even when working with relocation companies or financial institutions as the seller.

## *Commission Meeting Schedule*

Licensees and members of the public are invited to attend the open session of any meeting. Dates and locations are listed below. If you would like to appear please contact our office at (573) 751-2628.

Wednesday	December 1	Kansas City
Thursday	January 20	Jefferson City
Wednesday	March 22	Jefferson City
Wednesday	May 24	Saint Louis
Wednesday	August 2	Springfield
Friday	October 6	Lake of the Ozarks
Wednesday	December 6	Kansas City

## *Return To Sender*

The Missouri Real Estate Commission is getting a lot of mail returned because of bad addresses. When renewal notices (or other time sensitive notices) are returned to us, we become quite concerned because it means: 1) the licensee will not get the information on a timely basis, and 2) the licensee is in violation of the real estate regulation that says a licensee is obligated to notify the Missouri Real Estate Commission of any address change within 10 days of the change.

4 CSR 250-4.010 (4) states that within ten (10) days following a change in name or home address, each licensee shall notify the Commission in writing. If you have changed your address, be sure to advise us in writing.

### *Changes in Continuing Education Requirements for NEW Licensees!!*

*Did you receive your license on or after October 1, 1998? If you did, you must meet the new continuing education requirement.*

Effective October 1, 1998, any person who has been issued an original resident, nonresident or reciprocal salesperson or broker license shall, prior to the expiration date of your license, satisfactorily complete twelve- (12) hours of continuing education instruction in a classroom course of study entitled Missouri Real Estate Practice. No licensee shall be granted continuing education credit for completing Missouri Real Estate Practice after the expiration date of the initial license.

*If you are not sure if this course is necessary for you, contact our office for verification.*

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### *Internet Advertising And Broker Risk*

*Reprinted with permission by author Gary Hays.*

Real estate licensees are discovering the advantages of promoting their services and products on the Internet with a web page. But according to Gary Hays, designated broker of RE/MAX Executives in Portland, this relatively new capability comes with new challenges for brokers to supervise their licensees' real estate activities. Hays has an extensive background in information technology, and graduate degrees in computer science and management science.

Hays said that web pages essentially consist of written and audio advertising and information. The

same statutes and rules in place today for print, television and radio advertising also apply to web pages. Brokers should review any web page advertising whether it is a web page sponsored by the brokerage or privately designed web page for the business.

Hays urges brokers to develop office policies on Internet activity, including web pages. Those who don't may leave themselves vulnerable to violation of

Missouri real estate license laws and rules, as well as federal regulations. Potential violations include misrepresentation, deception, untruthfulness, failure to use business name, using a name different from the one under which the licensee is licensed and trademark infringements such as the unauthorized use of the REALTOR trademark. Improperly worded ad copy could trigger a complaint concerning federal fair housing laws.

Hays also urges brokers to preview licensees' web pages. In-house procedures should require licensees to submit any new web pages for broker approval before it is available to general public access, as well as prior approval of any changes made to an existing web page. It is also important to make external web page developers aware of advertising laws and requirements.

Hays believes that use of computers in the real estate industry is limited only by one's imagination (and available funds). He predicts that licensees sending documents electronically to their clients for signature "on-line" and offering presentations via lap top computers with video capability will be common place in the near future.

According to Hays' applicable laws must be reviewed and revised accordingly to maintain pace with new technology and practices. In the meantime, licensees must abide by the current advertising laws. That is why he believes, "Having appropriate policies in place for Internet activity and web pages will reduce the risk brokers face in the new era of real estate electronic commerce."

Gary Hays' Internet address is [hays@worldstar.com](mailto:hays@worldstar.com).

### *Notice*

Please be advised that original applications, renewals, and transfer applications for salesperson and broker licenses, as well as the applications to take these examinations, contain a question inquiring about criminal convictions. The question on these applications reads: "Have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendre, in a criminal prosecution under the laws of this state or any other state or of the United States,

whether or not sentence was imposed? (Note: This includes SIS pleadings and misdemeanor charges.) If yes, provide the date, offense, court location, and case number."

Convictions of Blood Alcohol Content, (BAC), and Driving While Intoxicated, (DWI), are in most cases prosecuted as misdemeanor offenses, and therefore, must be disclosed. Traffic violations need not be disclosed.

While licensure can be denied because of a criminal conviction, disclosure of the criminal conviction is **not** an automatic denial of a license. However, pursuant to 4 CSR 250-3.010 (6), the Missouri Real Estate Commission reserves the right to hold an application for a reasonable length of time for investigation and to determine the eligibility of the applicant.

Licensing fees paid to this office with any application are non-refundable, even if the license is denied.

### *Proposed Regulation Changes*

*It was the intention of the MREC to have published the proposed regulations for comment and for them to become effective January 1, 2000. However, the Department of Economic Development has issued a moratorium on all regulation amendments due to a recent statutory change affecting the filing of regulations with the Secretary of State's office. Until the moratorium is lifted, these proposals cannot proceed. However, in an effort to keep the licensees informed of upcoming changes, the proposals are outlined below. Bold type indicates amendments to regulation while [ ] indicates information which will be deleted.*

#### **4 CSR 250-1.010 General Organization.**

(5) Requests for general information, applications, complaint forms or copies of statutes and rules may be directed to the Missouri Real Estate Commission, 3605 Missouri Boulevard, P.O. Box 1339, Jefferson City, MO 65102, telephone [(314)] (573) 751-2628, FAX number [(314)] (573) 751-2777.

#### **4 CSR 250-8.020 Broker Supervision and Improper Use of License and Office.**

(3) Appointments of designated agents and designated transaction brokers under section 339.820, RSMo shall be entered into by the designated broker or office manager/supervising broker on behalf of that broker and affiliated licensees.

(4) Appointments of designated agents and designated transaction brokers under section 339.820, RSMo shall be made in a written agreement for [a] brokerage [relationship] services or other written notice to the client or party, unless such appointment is presumed pursuant to section 339.820.1, RSMo.

(5) Individual brokers, designated brokers, and office managers/supervising brokers shall not be considered to be a dual agent or a transaction broker solely because such broker makes an appointment under section 339.820, RSMo. However, when such broker supervises the licensees for both sides of a transaction, that broker will be a dual agent or a transaction broker upon learning confidential information about either party to a transaction or upon being consulted by any licensee involved in the transaction. Also, when the broker supervises the licensee [for] representing or assisting one (1) side of the transaction and personally represents or assists the other side, that broker will be a dual agent or a transaction broker.

**4 CSR 250-8.070 Advertising.** The commission is proposing to rescind section (5) and renumber the remaining sections accordingly.

[(5) Inducements.

(A) Free Inducements. No licensee shall solicit, sell or offer for sale or lease any interest in real property by offering free lots, by conducting lotteries or contests or by offering prizes for the purpose of influencing a person to purchase or to consider to purchase.

(B) Conditional Inducements. No licensee shall use prizes, money, gifts or other valuable consideration which is not related to the real or personal property being sold as an inducement to secure or influence customers to purchase, lease, sell or list property when the awarding of those items is conditioned upon the purchase, lease, sale or listing.

(C) This prohibition shall apply to the use of any such item as an inducement even if the item is being provided or paid for by another.]

**4 CSR 250-8.090 [Brokerage Relationship Agreements or Authorization] Brokerage Service Agreements.**

(2) A licensee shall not show residential property unless a broker holds a currently effective written [listing agreement, other written agreement for brokerage services, or as a buyer's agent with] seller's/lessor's agency agreement, seller's/lessor's transaction brokerage agreement, or other written authorization to show.

(3) Seller's/Lessor's Agency (Sale/Lease Listing) Agreement.

- (A) Every written listing agreement or other written agreement for brokerage services shall contain all of the following:
  - 1. The price;
  - 2. The commission to be paid (including any and all bonuses);
  - 3. A definite beginning date;
  - 4. An expiration date;
  - 5. The licensee's duties and responsibilities;
  - [6. Specification of whether an offer of subagency may be made;]
  - [7. A clear statement to the seller/landlord(s) explaining the effects of the presumption of buyer's agency. This statement shall contain-
    - A. Missouri law presumes that, absent some other relationship being established, a licensee working with a buyer represents that buyer; and
    - B. That, as a result, any licensee showing property may represent the buyer; and
    - C. A licensee working with a buyer may be required to disclose to the buyer any information given to them by the seller;]
    - 6. A statement which permits or prohibits the designated broker from offering subagency.
    - 7. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;
    - 8. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;
    - 9. Specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to buyer's agents and/or transaction brokers;
    - 10. A statement which confirms that the seller/lessor received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the seller's agency agreement, or b) upon the licensee obtaining any personal or financial information, whichever occurs first;
    - [8.] 11. The signatures of all owners and the listing broker or listing agent as authorized by the broker;
    - [9.] 12. The type of listing, [ such as exclusive agency, exclusive right to sell or open];

[10.] 13. The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property; and

[11.] 14. All other terms and conditions under which the property is to be sold, leased or exchanged.

(B) The agreement shall contain no provision requiring an owner to notify the broker of intent to cancel the listing after the expiration date.

(C) Any change to the listing agreement or other written agreement for brokerage services must contain the initials of all parties.

(D) The licensee shall give a legible copy of every written listing agreement or other written agreement for brokerage services to the owner of the property at the time the signature of the owner(s) is obtained.

(E) A licensee shall not negotiate or enter into a [listing] **brokerage service** agreement with an owner if the licensee knows, or has reason to know, that the owner has a written unexpired exclusive [agency or exclusive right to sell listing] **brokerage service** agreement as to the property with another broker, unless the owner initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into [a listing] **an agreement** which will take effect after the expiration of the current [listing] **agreement**.

(F) No licensee shall make or enter into a net listing agreement for the sale or lease of real property or any interest in real property; this agreement is defined as one that stipulates a net price to be received by the owner with the excess over that price to be received by the broker as commission.

(G) A listing agreement or other written agreement for brokerage services may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

(4) Buyer's/Tenant's Agency Agreement.

(A) Every written buyer or tenant authorization shall contain all of the following:

1. A description of the type of property sought by the buyer or tenant;
2. The commission or fee to be paid (including any and all bonuses);
3. A definite beginning date;
4. [A definite] An expiration date;
5. The licensee's duties and responsibilities;
6. [Specification of whether an offer of subagency may be made;] A statement which permits or prohibits the designated broker from offering subagency;
7. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;
8. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;
9. Specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to seller's agents and/or transaction brokers;
10. A statement which confirms that the buyer received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the buyer's agency agreement, or b) upon the licensee obtaining any personal or financial information, whichever occurs first;

[7.] 11. The signatures of the buyers or tenants and the broker or agent as authorized by the broker;

[8.] 12. The type of agreement, [ such as exclusive agency, exclusive right to represent or open]; and

[9.] 13. All other terms and conditions prescribed by the buyers or tenants.

(B) The agreement shall contain no provision requiring a buyer or tenant to notify the broker of intent to cancel the agreement after the expiration date.

(C) Any change to the agreement or other written authorization must contain the initials of all parties.

(D) The licensee shall give a legible copy of every written agreement or other authorization to the buyer or tenant at the time the signatures are obtained and a copy of the written authorization shall be retained in the broker's office.

(E) A licensee shall not negotiate or enter into [an agency] a **brokerage service** agreement with a buyer or tenant if the licensee knows, or has reason to know, that the buyer or tenant has a written unexpired exclusive

agreement with another broker, unless the buyer or tenant initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into an agreement which will take effect after the expiration of the current agreement.

- (F) A buyer or tenant agency agreement may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original buyer or tenant agency agreement.
- (5) **Transaction Brokerage Agreement Between Broker And Seller/Lessor.**
  - (A) Every written seller's or lessor's transaction brokerage agreement shall contain all of the following:
    - 1. The price;
    - 2. The commission to be paid (including any and all bonuses);
    - 3. A definite beginning date;
    - 4. An expiration date;
    - 5. The licensee's duties and responsibilities;
    - 6. The signatures of all owners and the broker or affiliated licensee as authorized by the broker;
    - 7. The type of agreement;
    - 8. The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property;
    - 9. All other terms and conditions under which the property is to be sold, leased or exchanged;
    - 10. Specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to buyer's agents and/or other transaction brokers; and
    - 11. A statement which confirms that the seller/lessor received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the transaction brokerage agreement, or b) upon the licensee obtaining any personal or financial information, whichever occurs first.
  - (B) The agreement shall contain no provision requiring an owner to notify the broker of intent to cancel the agreement after the expiration date.
  - (C) Any change to the agreement must contain the initials of all parties.
  - (D) The licensee shall give a legible copy of every written agreement to the owner of the property at the time the signature of the owner(s) is obtained.
  - (E) A licensee shall not negotiate or enter into a brokerage service agreement with an owner if the licensee knows, or has reason to know, that the owner has a written unexpired exclusive brokerage service agreement as to the property with another broker, unless the owner initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into an agreement which will take effect after the expiration of the current agreement.
  - (F) No licensee shall make or enter into a net agreement for the sale or lease of real property or any interest in real property; this agreement is defined as one that stipulates a net price to be received by the owner with the excess over that price to be received by the broker as commission.
  - (G) Transaction brokerage agreements may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original transaction brokerage agreement.
- (6) **Transaction Brokerage Agreement Between Broker And Buyer/Tenant.**
  - (A) Every written buyer's or tenant's transaction brokerage agreement shall contain all of the following:
    - 1. A description of the type of property sought by the buyer or tenant;
    - 2. The commission or fee to be paid (including any and all bonuses);
    - 3. A definite beginning date;
    - 4. An expiration date;
    - 5. The licensee's duties and responsibilities;
    - 6. The signatures of the buyers or tenants and the broker or affiliated licensee as authorized by the broker;
    - 7. The type of agreement;
    - 8. All other terms and conditions prescribed by the buyers or tenants;
    - 9. Specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to seller's agents and/or other transaction brokers; and
    - 10. A statement which confirms that the buyer received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the transaction brokerage agreement, or b) upon the licensee obtaining any personal or financial information, whichever occurs first.

- (B) the agreement shall contain no provision requiring a buyer or tenant to notify the broker of intent to cancel the agreement after the expiration date.
- (C) Any change to the agreement must contain the initials of all parties.
- (D) The licensee shall give a legible copy of every written agreement or other authorization to the buyer or tenant at the time the signatures are obtained and a copy of the agreement shall be retained in the broker's office.
- (E) A licensee shall not negotiate or enter into a brokerage service agreement with a buyer or tenant if the licensee knows, or has reason to know, that the buyer or tenant has a written unexpired exclusive agreement with another broker, unless the buyer or tenant initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into an agreement which will take effect after the expiration of the current agreement.
- (F) Transaction brokerage agreements may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original transaction brokerage agreement.

[(5)] (7) Other Written Authorization. Written authorization to show residential property without [a brokerage agreement] an agency agreement or transaction brokerage agreement with the owner/landlord must contain all of the following:

- (A) A definite beginning date;
- (B) An expiration date;
- (C) The signatures of all owners or landlords and the broker or licensee as authorized by the broker;
- (D) The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property;
- (E) Permission to enter and show the property;
- (F) The commission or fee to be paid (including any and all bonuses); [and]
- (G) All other terms and conditions prescribed by the owners or landlords[.];
- (H) Any change to the written authorization must contain the initials of all parties; and
- (I) A statement which confirms that the owner or landlord received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the other written authorization, or b) upon the licensee obtaining any personal or financial information, whichever occurs first.

#### 4 CSR 250-8.095 Agency Disclosure - Rescinded

#### 4 CSR 250-8.095 Brokerage Relationship Disclosure

(1) Licensees acting with or without a written agreement for brokerage services pursuant to 339.710 to 339.860, RSMo, are required to disclose such relationships in the following instances and manner:

- (A) Seller's/landlord's agent or subagent:
  1. A licensee acting as an agent or subagent of the seller/landlord shall disclose this agency status no later than the first showing to a buyer/tenant who is not represented by or working with another licensee pursuant to 339.710 to 339.860, RSMo.
  2. If the buyer/tenant is represented by another licensee, the disclosure may be made to the buyer/tenant or their agent upon first contact with the buyer/tenant or their agent, whichever occurs first.
  3. If the seller's/landlord's agent is cooperating with another licensee under a written agreement of subagency or through a unilateral offer of subagency, the disclosure made by the subagent shall serve as the disclosure of the seller's/landlord's agent.
  4. In a cooperative sale/lease between a seller's/landlord's agent and a licensee working with a buyer/tenant as a transaction broker, the seller's/landlord's agent shall make disclosure of this agency status to the buyer/tenant and also to the licensee assisting the buyer/tenant upon first contact with each respective party.
  5. In a contemplated real estate transaction where no contact occurs with the buyer/tenant, their agent or transaction broker, the seller's/landlord's agent shall disclose this agency status to the buyer's/tenant's agent or transaction broker when first contact is established pursuant to subsections (B) 5. or (E) 5. of this section.

6. If the landlord's agent is conducting property management pursuant to 4 CSR 250-8.200, the unlicensed office personnel may, in their performance of the duties enumerated in 339.010 5. (5) (a)-(e), make the disclosure described herein on behalf of the landlord's agent.

(B) Buyer's/tenant's agent or subagent:

1. A licensee acting as an agent or subagent of the buyer/tenant shall disclose this agency status no later than the first showing to a seller/landlord who is not represented by or working with another licensee pursuant to 339.710 to 339.860, RSMo.
2. If the seller/landlord is represented by another licensee, the disclosure may be made to the seller/landlord or their agent upon first contact with the seller/landlord or their agent, whichever occurs first.
3. If the buyer's/tenant's agent is cooperating with another licensee under a written agreement of subagency or through a unilateral offer of subagency, the disclosure made by the subagent shall serve as the disclosure of the buyer's/tenant's agent.
4. In a cooperative sale/lease between a buyer's/tenant's agent and a licensee working with a seller/landlord as a transaction broker, the buyer's/tenant's agent shall make disclosure of this agency status to the seller/landlord and also to the licensee assisting the seller/landlord upon first contact with each respective party.
5. In a contemplated real estate transaction where no contact occurs with the seller/landlord, their agent or transaction broker, the buyer's/tenant's agent shall establish first contact with the seller's/landlord's agent or transaction broker and disclose this agency status prior to the presentation of an offer to exchange, purchase, rent, or lease.
6. If the landlord's agent or transaction broker is conducting property management pursuant to 4 CSR 250-8.200, the unlicensed office personnel may, in their performance of the duties enumerated in 339.010 5. (5) (a)-(e), receive the disclosure described herein on behalf of the landlord's agent or transaction broker.

(C) Dual agent:

1. A licensee acting as a dual agent in a real estate transaction shall disclose this agency status immediately upon its occurrence to all parties of a real estate transaction.
2. In a non-designated agency transaction, the disclosure made by the licensee procuring the buyer/tenant (selling licensee) shall serve as disclosure for the listing licensee and designated broker.
3. A designated broker who becomes a dual agent and does not personally represent any of the parties in a designated agency transaction shall not be required to make disclosure of this agency status provided written consent was given by all parties to the real estate transaction pursuant to 339.750.1, RSMo.

(D) Transaction broker assisting seller/landlord:

1. A licensee assisting a seller/landlord as a transaction broker who has not been deemed a transaction broker pursuant to 339.710 (19) (c), RSMo, shall disclose this brokerage relationship no later than the first showing to buyer/tenant who is not represented by or working with another licensee pursuant to 339.710 to 339.860, RSMo.
2. If the buyer/tenant is represented by another licensee, this disclosure may be made to the buyer/tenant or their agent upon first contact with the buyer/tenant or their agent, whichever occurs first.
3. If the licensee has not entered into a written transaction brokerage agreement with the seller/landlord, the licensee shall disclose the licensee's transaction broker status to the seller/landlord upon establishing such relationship with the seller/landlord.
4. In a cooperative sale between a seller's/landlord's transaction broker and a licensee working with a buyer/tenant as a transaction broker, the seller's/landlord's transaction broker shall make disclosure of this brokerage relationship status to the buyer/tenant and also to the licensee assisting the buyer/tenant upon first contact with each respective party.
5. In a contemplated real estate transaction where no contact occurs with the buyer/tenant, or their agent or transaction broker, the seller's/landlord's transaction broker shall disclose this brokerage relationship status to the buyer's/tenant's agent or transaction broker when first contact is established pursuant to subsections (B) 5. or (E) 5. of this section.
6. If the landlord's transaction broker is conducting property management pursuant to 4 CSR 250-8.200, the unlicensed office personnel may, in their performance of the duties enumerated in 339.010 5. (5) (a)-(e), make the disclosure described herein on behalf of the landlord's transaction broker.

## (E) Transaction broker assisting buyer/tenant:

1. A licensee assisting a buyer/tenant as a transaction broker who has not been deemed a transaction broker pursuant to 339.710 (19) (c), RSMo, shall disclose this brokerage relationship no later than the first showing to a seller/landlord who is not represented by or working with another licensee pursuant to 339.710 to 339.860, RSMo.
2. If the seller/landlord is represented by another licensee, this disclosure may be made to the seller/landlord or their agent upon first contact with the seller/landlord or their agent, whichever occurs first.
3. If the licensee has not entered into a written transaction brokerage agreement with the buyer/tenant, the licensee shall disclose the licensee's transaction broker status to the buyer/tenant upon establishing such relationship with the buyer/tenant.
4. In a cooperative sale/lease between a buyer's/tenant's transaction broker and a licensee working with a seller/landlord as a transaction broker, the buyer's/tenant's transaction broker shall make disclosure of this brokerage relationship status to the seller/landlord and also to the licensee assisting the seller/landlord upon first contact with each respective party.
5. In a contemplated real estate transaction where no contact occurs with the seller/landlord, their agent or transaction broker, the buyer's/tenant's transaction broker shall establish first contact with the seller's/landlord's agent or transaction broker and disclose this brokerage relationship status prior to the presentation of an offer to exchange, purchase, rent, or lease.
6. If the landlord's agent or transaction broker is conducting property management pursuant to 4 CSR 250-8.200, the unlicensed office personnel may, in their performance of the duties enumerated in 339.010 5. (5) (a)-(e), receive the disclosure described herein on behalf of the landlord's agent or transaction broker.

## (F) Transaction broker pursuant to 339.710 (19) (c), RSMo:

1. A licensee who becomes a transaction broker pursuant to 339.710 (19) (c), RSMo, shall disclose this transaction broker status immediately upon its occurrence to all parties to the real estate transaction to be confirmed in writing prior to the execution of the contract.
2. The disclosure of the licensee procuring the buyer (selling licensee) shall serve as disclosure for the listing licensee and designated broker.
3. A designated broker who becomes a transaction broker and does not personally represent any of the parties in a designated agency transaction shall not be required to make disclosure of this status provided written consent was given by all parties to the real estate transaction.

**4 CSR 250-8.096 Brokerage Relationship Confirmation**

(1) Licensees acting with or without a written agreement for brokerage services pursuant to 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first signature to the real estate contract. Nothing contained herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract.

## (A) Written confirmation must:

1. Identify the licensee's brokerage relationship;
2. Identify the source or sources of compensation;
3. Confirm that the brokerage relationships, if required by rule or regulation, were disclosed to the seller/landlord and/or buyer/tenant or their respective agents and/or transaction brokers no later than the first showing, upon first contact, or immediately upon the occurrence of any change to that relationship;
4. Confirm the seller's/landlord's and buyer's/tenant's receipt of the Broker Disclosure Form prescribed by the commission;
5. Be signed and dated by the seller/landlord and buyer/tenant. If the landlord has entered into a written property management agreement pursuant to 4 CSR 250-8.200 - 210, the landlord shall not be required to sign the written confirmation; and
6. Be signed and dated by the disclosing licensees on or before the contract date. If a landlord's agent or transaction broker is conducting property management pursuant to 4 CSR 250-8.200 - 210, the unlicensed office personnel may, in their performance of the duties enumerated in 339.010 5. (5) (a)-(e), sign the written confirmation on behalf of the landlord's agent or transaction broker.

(B) A signed copy shall be given to the seller/landlord and buyer/tenant and a signed copy shall be retained by the disclosing licensee's broker. If any party to the real estate transaction refuses to sign the confirmation, the licensee working with that party pursuant to 339.710 to 339.860, RSMo, shall set forth, sign and date a written explanation of the facts of refusal and the explanation shall be retained by the licensee's broker.

#### **4 CSR 250-8.097 Broker Disclosure Form.**

(1) At the earliest practicable opportunity during or following the first substantial contact by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a [written agreement for services] **brokerage relationship** as described in section 339.710.5, RSMo, the licensee shall provide that person with a written copy of the current Broker Disclosure Form prescribed by the Missouri Real Estate Commission. In any event, a licensee shall provide the [unrepresented party (customer)] **party that has not entered into a brokerage relationship as described in section 339.710.5, RSMo**, the Broker Disclosure Form upon obtaining any personal or financial information or before the signing of a brokerage service agreement, whichever occurs first. [If the prospective customer refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of the refusal and the explanation shall be retained by the licensee's broker.] If a landlord's agent or transaction broker is conducting property management pursuant to 4 CSR 250-8.200, the unlicensed office personnel may, in their performance of the duties enumerated in 339.010 5. (5) (a)-(e), provide a tenant with a written copy of the current Broker Disclosure Form prescribed by the commission on behalf of the landlord's agent or transaction broker.

(2) [The licensee providing the Broker Disclosure Form is required to see that the prescribed form is completed in its entirety.] The brokerage relationship marked as offered on the Broker Disclosure Form shall correspond to the written office policy adopted by the designated broker pursuant to 339.760.1, RSMo.

#### **4 CSR 250-8.160 Retention of Records.**

(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; [broker disclosure forms and] brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

#### **4 CSR 250-8.210 Management Agreements.**

(1) Every written property management agreement or other written authorization between a broker and the owners of the real estate shall-

- (A) Identify the property to be managed;
- (B) State the amount of fee or commission to be paid and when the fee or commission will be paid;
- (C) Specify whether security deposits and prepaid rents will be held by the broker or the owner;
- (D) Contain the beginning date of the agreement;
- (E) Provide the terms and conditions for termination of the property management agreement by the broker or the owner of the property; [and
- (F) Contain signatures of broker and owner or their authorized agent.]
- (F) Include the licensee's duties and responsibilities;
- (G) Contain a statement which permits or prohibits the designated broker from offering subagency (not applicable for transaction broker agreements);
- (H) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;
- (I) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;
- (J) Include specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to tenant's agents and/or transaction brokers;

- (K) Contain a statement which confirms that the landlord received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the brokerage relationship agreement, or b) upon the licensee obtaining any personal or financial information, whichever occurs first; and
- (L) Contain the signatures of all the owners and the broker or affiliated licensee as authorized by the broker.

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## Disciplines

### **Arnold, Doris Jean Cape Girardeau, MO**

By Settlement Agreement with the MREC, Arnold's license is placed on probation for six months starting July 16, 1999 to January 16, 2000.

Violations: 339.100.2(4), (5) and (14), RSMo 1994 and 4 CSR 250-8.100 (1) and (3).

Prior to completing a contract, Arnold verbally agreed with the sellers to add a special agreement concerning commissions. Arnold failed to include that agreement. Arnold then amended the contract adding false information and did not obtain the seller's initials or authorization in writing. She also failed to provide the sellers a copy of the contract.

### **Bohlen Realtors Inc. and Ronald L. Bohlen St. Louis, MO**

By disciplinary order of the M.R.E.C., the licenses of Bohlen Realtors Inc. and Ronald L. Bohlen were revoked effective January 29, 1999.

Violations: 339.100.2 (1), (2), (3), (14), (17), and (18), RSMo.

MREC staff conducted two audits of the licensees' records and found the following violations: 1) shortages of \$328.40, \$1,662.34, \$2,959.57, \$6,480.78, \$1.80, and \$2,000; and overages of \$14.52, and \$100 were found in the company's escrow accounts; 2) a property management account was not registered with the MREC; 3) the MREC was not notified when two registered accounts were closed; 4) written agency disclosure was not provided to the buyer; 5) Bohlen failed to sign the written agency disclosure; 6) all buyers and/or sellers did not sign the agreement; 7) the buyer's and/or seller's signatures on sales contracts were not dated; 8) bank statements, voided checks, and closing statements were not retained; 9) failed to have current written management agreements; 10) management agreements failed to state the amount of the management fee, specify whether security deposits and prepaid rents would be held by broker or owner, specify when periodic statements of income and expenses would be sent to the owner, specify if the broker or owner would be respon-

sible for the taxes and insurance, and contain signatures of the broker and/or owner; 11) Bohlen failed to disclose that an escrow account was interest-bearing and to identify the receiver of the interest; 12) management fees were not removed from the escrow account monthly; 13) the related transaction was not identified on deposit tickets and the check or corresponding check stub; 14) Bohlen failed to execute a Consent to Examine form for all escrow accounts maintained by the company; 15) checks were written on escrow accounts without sufficient owner funds to cover the disbursement; 16) earnest money deposits were disbursed prior to closing without written authorization from all parties; 17) security deposits were not held intact; and 18) the property was not properly identified on listing agreements and sales contracts.

An investigation conducted by MREC staff found that Bohlen had been convicted in federal court of misuse of grant funds.

### **Carr, Daniel K. Kansas City, MO**

By settlement agreement with the MREC, Carr's license was placed on one year probation starting January 30, 1999 to January 30, 2000.

Violations: 339.100.2 (2), (11), (14), and (18), RSMo 1994.

Carr prepared a bid for a Department of Natural Resources' (DNR) project, without the knowledge or supervision of his broker. Carr used his broker's office space, supplies, and other resources to prepare the bid without authority from his broker. Carr failed to advise his broker of the existence of the DNR bid.

### **Dollins, James E. Excelsior Springs, MO**

By order of the MREC, Mr. Dollins was be issued a probated real estate broker-salesperson license.

Probation began on July 9, 1999 and is scheduled to run to July 9, 2000.

Violations: 339.100.2 (14) and (17), RSMo.

Mr. Dollins pled guilty on May 8, 1992, to one count of felony bank fraud.

**Douglass, Kenge Anne  
Gravois Mills, MO**

By Joint Stipulation with the MREC, Douglass was issued a probated salesperson license. Probation

began on February 10, 1999 and is scheduled to run to the remainder of her criminal parole or probation, whichever is longer, plus one additional year, with special conditions.

Violations: 339.100.2 (15), (17) and (18), RSMo 1994.

On May 31, 1994, Ms. Douglass pled guilty to the felony offense of trafficking (drugs) in the second degree. On January 3, 1998, Ms. Douglass pled guilty to the misdemeanor offense of driving while intoxicated.

**Gordon A. Gundaker Real Estate Inc.  
Maryland Heights, MO**

By Joint Stipulation with the MREC, Gordon A. Gundaker Real Estate Inc.'s license was placed on probation for eighteen (18) months, starting January 20, 1999 to July 20, 2000.

Violations: 339.100.2 (2) and (18), RSMo.

Agents of the company knowingly sold property without advising the buyers that the property was contiguous to a hazardous waste site.

**Hebron, Karon E.  
St. Louis, MO**

By order of the MREC, Hebron's license was revoked effective April 7, 1999.

Violations: 339.100.2(2), (5), (11), and (15), RSMo 1994.

Hebron failed to disclose her agency relationship to a buyer. She assisted in the sale of property without a written listing agreement or any other written authorization. She failed to inform her broker of money she took for the sale of property. She also failed to give the buyers in a transaction documents that they had signed. Hebron signed the buyers' names to a seller's disclosure statement without authorization.

**Jones, Tonya L.  
St. Louis, MO**

By order of the MREC, Ms. Jones' license was revoked effective May 22, 1999.

Violations: 339.100.2 (17), RSMo.

On July 17, 1996, Ms. Jones pled guilty in the U.S. District Court for the Eastern District of Missouri to one count of money laundering in violation of 18 US.C. section 1956(a) (1)(A)(I) and 2.

**Langkraehr, Randall D.  
Concordia, MO**

By Settlement Agreement with the MREC, Mr. Langkraehr's license was placed on probation for six months starting July 13, 1999 to January 13, 2000.

Violations: 339.100.2 (14) RSMo 1994 and 4 CSR 250-8.170(1).

Mr. Langkraehr failed to respond within thirty days to a written request or inquiry by the Commission.

**Light, Sharon K.  
Cape Girardeau, MO**

By Settlement Agreement with the MREC, Light's license was placed on probation for six months starting June 18, 1999 to December 18, 1999.

Violations: 339.100.2 (12), (14) and (18), RSMo 1994 and 4 CSR 250-8.070 (5) (B) and (C).

Light offered to give \$2,000 of her commission to a buyer if they would use her as their realtor. Light in fact paid the buyers \$2,000 from her commission on the date of closing of the sales transaction.

**Marshall, Robert L.  
St. Louis, MO**

By order of the MREC, Mr. Marshall was issued a probated real estate salesperson license. Probation began on May 10, 1999 and is scheduled to run to May 10, 2001.

Violations: 339.100.2 (17) and (18), RSMo.

Mr. Marshall pled guilty on February 22, 1982, to second degree burglary. He failed to disclose this conviction on his application.

**Meagher, Michael C.  
Pevely, MO**

By Joint Stipulation with the MREC, Meagher's license was placed on probation for four (4) years from March 19, 1999 to March 19, 2003.

Violations: 339.100.2 (17), RSMo 1994.

Mr. Meagher was found guilty of stealing over \$150, a class C felony.

**Monash-Keller, Frances L.  
Maryland Heights, MO**

By Joint Stipulation with the MREC, Monash-Keller's license was placed on probation for eighteen (18) months, starting June 6, 1998 to December 31, 1999.

Violations: 339.100.2 (2), and (18), RSMo.

Monash-Keller sold property to a prospective purchaser without advising them that the property was contiguous to a hazardous waste site.

**Offutt, Larry B.  
Cameron, MO**

By order of the MREC, Mr. Offutt's license was revoked effective November 20, 1998.

Violations: 339.100.2 (1), (3), (14) and (18), RSMo.

Mr. Offutt rented property without first obtaining a written property management agreement. Without a written property management agreement, Mr. Offutt could not give a copy of the agreement to the owner, or retain a copy for himself. Mr. Offutt failed to maintain an escrow account for the rent collected and failed to remit monies to the owner of the property in a timely manner. He also failed to follow the owner's instructions.

**Rapp, Frederick P. II  
St. Louis, MO**

By order of the MREC, Mr. Rapp was issued a probationary real estate salesperson license. Probation began on December 3, 1998 and is scheduled to run to February 23, 2001. Mr. Rapp's probation can be adjusted based upon early release from criminal probation.

Violations: 339.100.2 (17) and (18), RSMo.

Mr. Rapp pled guilty on October 20, 1995, to felony possession with intent to distribute marijuana.

**Roach, Dale E.  
St. Louis, MO**

By order of the MREC, Roach's license was revoked effective February 24, 1999.

Violations: Section 621.110, RSMo 1986

Roach failed to issue refunds within sixty days after the effective date of the settlement agreement he entered into with the MREC, thus he failed to comply with the terms of the settlement agreement.

**Roberts, Paul L.  
Lees Summit, MO**

By disciplinary order Roberts' license was placed on six months suspension starting July 29, 1999 to January 29, 2000, followed by three years probation, starting January 29, 2000 to January 29, 2003.

Violations: 339.100.2 (1),(3),(10),(14); and 18, 339.105.1, and .3, RSMo 1994; and 4 CSR 250-4.030 (1); 250-8.090(3)(A)(B)1 and 5; 250-8.095(1)(B)(2); 250-8.100; 250-8.120(1), (2), (4), (5), and (7); 250-8.150, 250-8.160.

An audit conducted on Mr. Roberts' real estate company revealed the following: Roberts wrote checks on the escrow account for his personal use; earnest money was not deposited as specified in the contract; Roberts falsely completed the corporation's renewal application; a shortage in the sales escrow account; records were not maintained adequately; three fictitious business names were used for the corporation without being registered with the MREC; listing agreements did not properly identify the real property being sold; listing agreements were not signed by the sellers; listing agreements failed to include a price; the agency relationship of an agent associated with the corporation was not disclosed in writing by the agent to the buyers; written agency disclosures were not signed and dated by the agents; contracts did not specify who was to hold the earnest money; all parties to transactions did not sign the contracts; the date of final acceptance was not noted on contracts; signatures on the contract were not dated by the buyers and sellers; changes to a contract were not initiated by the buyers and sellers; and closing statements were not accurate.

**Rossignol, Ronald D.  
Houston, MO**

By Joint Stipulation with the MREC, Rossignol's license was placed on probation for one year starting May 19, 1998 to May 19, 1999.

Violations: 339.100.2 (18), RSMo, 1994.

Rossignol submitted an offer to purchase a property that was listed under an exclusive type agreement with his real estate company. After submitting the contract to purchase the property, Rossignol took no steps, verbal or written, to terminate his agency relationship with the seller. Rossignol was acting on his own behalf with regard to his contract to purchase the property. After Rossignol submitted his offer, an individual expressed interest in the same property. Rossignol failed to inform the seller of the other party interested in the property.

**Russell, O. Shannon  
Neosho, MO**

By settlement agreement with the MREC, Mr. Russell's license was placed on one year probation starting December 24, 1998 to December 24, 1999.

Violations: 339.100.2 (14) and (18), RSMo, 4 CSR 250-8.020.

Mr. Russell allowed his broker license to be used by an unlicensed real estate firm for monetary compensation. Russell failed to properly supervise the activities of individuals employed by the real estate firm. He had no control over the business affairs of the real estate state firm. Mr. Russell permitted the real estate firm to use his license in furtherance of an unlicensed real estate brokerage operation.

**Schieszer, Joseph T.  
St. Louis County, MO**

By Joint Stipulation with the MREC, Schieszer's license was suspended for three months starting January 21, 1999 to April 21, 1999, followed by five years probation with special conditions starting April 21, 1999 to April 21, 2004.

Violations: 339.100.2 (3), (4), (14), and (18), RSMo, 1994.

Schieszer agreed to purchase a property, conducted the closing, and provided the seller a copy of the settlement statement. As the broker, Schieszer signed but failed to date the settlement statement. Schieszer failed to timely remit payment for the expenses identified on the settlement statement, including the payoff of the seller's mortgage. As the payments identified on the settlement statement were not paid as indicated, Schieszer prepared a false document. The settlement statement was relied upon by a lending institution as being true and accurate. Also, Schieszer moved his home and office and failed to notify the Commission of his new addresses.

**Smith, Karen D.  
Florissant, MO**

By Joint Stipulation with the MREC, Ms. Smith's license was placed on probation from May 18, 1999 to April 30, 2000.

Violations: 339.100.2 (2), (9), (15), (17) and (18), RSMo, 1994.

Ms. Smith submitted an application to a mortgage company for a HUD insured loan knowing that the application contained false statements. On February 12, 1998, Ms. Smith pled guilty to knowingly publishing materially false loan statements to HUD.

**Volner, James L.  
Imperial, MO**

By order of the MREC dated December 18, 1999, Volner was issued a probated broker license. The probation period of Volner's real estate license will run concurrent with his criminal probation.

Violations: 339.100.2 (17) and (18), RSMo 1994.

In September of 1994, Volner pled guilty, in federal court, to a two-count information for the distribution and sale of marijuana and racketeering narcotics.

## *Transaction Broker Statutes*

*Please note that we have only listed the highlighted changes to the transaction brokerage statutes. You may find a complete copy of the statutes by going to [www.state.mo.us/](http://www.state.mo.us/) Then go to the bottom of the page and type HB866 where it says "Search Missouri State Government Here!" and search. Click on "HB866 Transaction Brokers-Treadway, Joseph L.". Then go to "Available Bill Text for HB866" and click on "Truly Agreed".*

(5) "Brokerage relationship", the relationship created between a designated broker, the broker's affiliated licensees, and a client relating to the performance of services of a broker as defined in section 339.010, and sections 339.710 to 339.860. If a designated broker makes an appointment of an affiliated licensee or affiliated licensees pursuant to section 339.820, such brokerage relationships are created between the appointed licensee or licensees and the client. Nothing in this subdivision shall:

- (a) Alleviate the designated broker from duties of supervision of the appointed licensee or licensees; or
- (b) Alter the designated broker's underlying contractual agreement with the client;

(11) "Designated broker", [the] any individual licensed as a broker who is operating pursuant to the definition of "real estate broker" as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker;

(12) "Designated transaction broker", a licensee named by a designated broker or deemed appointed by a designated broker as the transaction broker for a client pursuant to section 339.820;

(13) "Dual agency", a form of agency which [results] may result when an agent licensee or someone affiliated with the agent licensee represents another party to the same transaction;

[(13)] (14) "Dual agent", a limited agent who, with the written consent of all parties to a contemplated real estate transaction, has entered into an agency brokerage relationship, and not a transaction brokerage relationship, with and therefore represents both the seller and buyer or both the landlord and tenant;

[(14)] (15) "Licensee", a real estate broker or salesperson as defined in section 339.010;

[(15)] (16) "Limited agent", a licensee whose duties and obligations to a client are those set forth in sections 339.730 to 339.750;

[(16)] (17) "Ministerial acts", those acts that a licensee may perform for a person or entity that are informative in nature and do not rise to the level [of active representation on behalf of a person] which requires the creation of a brokerage relationship. Examples of these acts include, but are not limited to:

- (a) Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;
- (b) Responding to telephone inquiries from a person concerning the price or location of property;
- (c) Attending an open house and responding to questions about the property from a consumer;
- (d) Setting an appointment to view property;
- (e) Responding to questions of consumers walking into a licensee's office concerning brokerage services offered on particular properties;
- (f) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
- (g) Describing a property or the property's condition in response to a person's inquiry;
- (h) Showing a customer through a property being sold by an owner on his or her own behalf; or

Referral to another broker or service provider;

[(17)] (18) "Single agent", a licensee who has entered into a brokerage relationship with and therefore represents only one party in a real estate transaction. A single agent may be one of the following:

- (a) "Buyer's agent", which shall mean a licensee who represents the buyer in a real estate transaction;
- (b) "Seller's agent", which shall mean a licensee who represents the seller in a real estate transaction; and
- (c) "Landlord's agent", which shall mean a licensee who represents a landlord in a leasing transaction;
- (d) "Tenant's agent", which shall mean a licensee who represents the tenant in a leasing transaction;

[(18)] (19) "Subagent", a designated broker, together with the broker's [appointed agents] affiliated licensees, engaged by another designated broker, together with the broker's affiliated or appointed affiliated licensees, to act as a limited agent for a client, or a designated broker's unappointed affiliated licensees engaged by the designated broker, together with the broker's appointed affiliated licensees, to act as a limited agent for a client. A subagent owes the same obligations and responsibilities to the client pursuant to sections 339.730 to 339.740 as does the client's designated broker;

[(19)] (20) "Transaction broker", any licensee acting pursuant to sections 339.710 to 339.860, who:

- (a) Assists the parties to a transaction without an agency or fiduciary relationship to either party and is, therefore, neutral, serving neither as an advocate or advisor for either party to the transaction;
- (b) Assists one or more parties to a transaction and who has not entered into a specific written agency agreement to represent one or more of the parties; or
- (c) Assists another party to the same transaction either solely or through licensee affiliates. Such licensee shall be deemed to be a transaction broker and not a dual agent, provided that, notice of assumption of transaction broker status is provided to the buyer and seller immediately upon such default to transaction broker status, to be confirmed in writing prior to execution of the contract.

339.720 (6) The designated broker enters into a written dual agency agreement with the parties pursuant to subsection 4 of section 339.780;

(7) The designated broker is acting in a manner described in paragraph (c) of subdivision (20) of section 339.710 without proper notice of assumption of transaction broker status; or

(8) The licensee is making a listing presentation, which may include pricing and marketing advice about a potential future transaction, to a customer in anticipation of entering into a signed agency brokerage service agreement as a direct result of the presentation.

339.755 2. A transaction broker shall have the following duties and obligations:

(2) To exercise reasonable skill, care and diligence as a transaction broker, including but not limited to:

(a) Presenting all **written** offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent unless otherwise provided in the agreement entered with the party;

(b) Informing the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of such broker;

(c) Accounting in a timely manner for all money and property received;

(d) To disclose to each party to the transaction any adverse material facts of which the licensee has actual notice or knowledge;

(e) Assisting the parties in complying with the terms and conditions of any contract;

(f) The parties to a transaction brokerage transaction shall not be liable for any acts of the transaction broker.

3. The following information shall not be disclosed by a transaction broker without the informed consent of the party or parties disclosing such information to the broker:

(1) That a **buyer or tenant** is willing to pay more than the purchase price or lease rate offered for the property;

(2) That a **seller or landlord** is willing to accept less than the asking price or lease rate for the property;

(3) What the motivating factors are for any party buying, selling or leasing the property;

(4) That a seller or buyer will agree to financing terms other than those offered;

(5) Any confidential information about the other party, unless disclosure of such information is required by law, statute, rules or regulations or failure to disclose such information would constitute fraud or dishonest dealing.

4. A transaction broker has no duty to conduct an independent inspection [of, or discover any defects in, the property. Nothing in this section limits the obligation of the buyer to inspect the physical condition of the property] or investigation for adverse material facts for the parties.

339.780. 1. All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker.

5. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to act as a subagent shall enter into a written agreement with the designated broker for the client. If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client. If a designated broker has made an appointment pursuant to section 339.820, an affiliated licensee that has been excluded by such appointment may enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

339.820. 1. A designated broker entering into a limited agency agreement with a client for the listing of property or for the purpose of representing that person in the buying, selling, exchanging, renting, or leasing of real estate may appoint in writing affiliated licensees as designated agents to the exclusion of all other affiliated licensees. A designated broker entering into a written transaction brokerage agreement with a party for the listing of property or for the purpose of assisting that person in buying, selling, exchanging, renting, or leasing of real estate may appoint in writing affiliated licensees as designated transaction brokers to the exclusion of all other affiliated licensees. If a designated broker has made an appointment pursuant to this section, an affiliated licensee assisting a party without a written agreement shall be presumed to be a transaction broker to the exclusion of all other affiliated licensees, unless a different brokerage relationship status has been disclosed to or established with that party.

2. A designated broker shall not be considered to be a dual agent or a transaction broker solely because such broker makes an appointment pursuant to this section, except that any licensee [who is not a transaction broker, and] who personally represents both the seller and buyer or both the landlord and tenant in a particular transaction shall be a dual agent or a transaction broker and shall be required to comply with the provisions governing dual agents or transaction brokers.

339.830. 1. All designated agents or designated transaction brokers to the extent allowed by their licenses shall have the same duties and responsibilities to the client and customer pursuant to sections 339.730 to [339.750] 339.755 as the designated broker except as provided in section 339.820.

Section 1. The provisions of this act shall become effective January 1, 2000.

**Missouri Real Estate Commission**

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